

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of RACHAEL MCFADDEN, EVA  
MCFADDEN, DAVID MCFADDEN, and  
ELIZABETH MCFADDEN, Minors.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

REBECCA MCFADDEN,

Respondent-Appellant,

and

NATHAN LEOWITZ and SAMUEL KENYA,

Respondents.

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UNPUBLISHED

August 12, 2004

No. 253782

Genesee Circuit Court

Family Division

LC No. 97-108168-NA

Before: Hoekstra, P.J., and Cooper and Kelly, JJ.

MEMORANDUM.

Respondent-appellant appeals as of right from the trial court order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(a)(ii), (c)(i) and (g). We affirm.

This Court reviews a trial court's decision to terminate parental rights for clear error. MCR 3.977(J); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). If the trial court determines that the petitioner established the existence of one or more statutory grounds for termination by clear and convincing evidence, then the trial court must terminate the respondent's parental rights unless it determines that to do so is clearly not in the children's best interests. *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000). We review for clear error the trial court's decision with regard to the children's best interests. *Id.* at 356-357.

The trial court did not clearly err in finding statutory grounds for termination existed in this case. First, the evidence clearly established that respondent-appellant did not contact the three youngest children or the FIA from September 2002 through June 2003, thus satisfying subsection 19b(3)(a)(ii). Although there was evidence that respondent-appellant saw and spoke

with Rachael, any error in basing termination upon this subsection was harmless since the trial court properly based termination on the other two statutory grounds. Subsections 19b(3)(c)(i) and (g) were clearly established by respondent-appellant's failure to obtain suitable housing or address her mental health problems. Given respondent-appellant's resistance to treat her mental health problems, there was no reasonable expectation that she could either rectify the adjudicating conditions or provide proper care for the children within a reasonable time, given their ages. Although respondent-appellant argues that the FIA failed to provide sufficient assistance to her, given her mental health problems, the evidence showed that numerous services were provided and it was the unwillingness of respondent-appellant to participate that led to the termination.

Finally, a review of the record, which includes evidence that respondent-appellant was involved with CPS in 1995 and 1997, established that the trial court's finding regarding the children's best interests was not clearly erroneous. MCL 712A.19b(5); *Trejo, supra* at 364-365.

Affirmed.

/s/ Joel P. Hoekstra  
/s/ Jessica R. Cooper  
/s/ Kirsten Frank Kelly